

REMARKS

I. Status of Claims

Claims 2, 3, 7, 16, 18, 20, 22, 23, 25 to 27, 29 to 31, 35 and 36 are original as recited in the claims of PCT/US2004/001628. Claims 8, 14, 15, 17, 19, 21, 33, 34, 39 and 40 were presented for consideration in the preliminary amendment dated October 7, 2005. Claims 5, 10 to 13 and 38 are hereby cancelled without prejudice. Claims 1, 4, 6, 9, 24, 28, 32 and 37 are currently amended. Claims 1 to 4, 6 to 9, 14 to 37, 39 and 40 are now pending.

It is respectfully submitted that no new matter was added in this amendment.

II. Election of Species Requirement

In the Office Action dated July 27, 2009, the Examiner alleged that the present application contains the following species:

- (i) Active dry powder inhaler device or passive dry powder inhaler device;
- (ii) Additive material or force control agent, which appear to encompass the same classes of materials; or
- (iii) Active agent.

Thus, in response to the Election of Species Requirement, the Examiner asserted that a responsive election will elect:

- (i) Whether the dry powder inhaler device is an active DPI or a passive DPI;
- (ii) A single specifically disclosed additive material or single specifically disclosed force control agent, such as from those recited in claims 11 and 5, respectively; and
- (iii) Whether the active agent is (a) a small molecule or (b) a carbohydrate.

According to the Office Action, the claims of the present application are deemed to correspond to the species listed above as follows:

- (i) Claims 4-8 correspond specifically to a force control agent and claims 9-10 correspond to an additive material;
- (ii) Claims 12 to 13 specifically recite either an active DPI or a passive DPI; and
- (iii) Claim 38 specifically recites that the active agent is either a small molecule or a carbohydrate.

In addition, the Office Action stated that the following claims are generic:

- (i) Claims 4-8 and 9-10 are generic for the force control agent and additive material, respectively;
- (ii) Claims 1-11 and 14-40 are generic for whether the DPI device is an active DPI device or a passive DPI device; and
- (iii) Claims 1-40 are generic as to whether the pharmaceutical agent is a small molecule or a carbohydrate.

In response to the present Election of Species Requirement, Applicants elect, without traverse, passive dry powder inhaler devices, wherein the additive material is metal stearate and wherein the active agent is a small molecule.

Claim 1 has been amended to recite in relevant part: “A passive dry powder inhaler device comprising a dry powder formulation comprising apomorphine and a metal stearate” which is believed to encompass and be readable on the elected species. Pending claims 2 to 4, 6 to 9, 14 to 37, 39 and 40 depend directly or indirectly from claim 4 and this are also believed to encompass and be readable on the elected species.

Claim 4 has been amended to recite in relevant part: “metal stearate as a force control agent” in response to the election of species requirement. Claim 5 has been cancelled without prejudice in the present amendment. Claims 6 to 8 depend directly or indirectly from claim 4 which now recites: “metal stearate as a force control agent” in response to the election of species requirement.

Claim 9 has been amended to recite in relevant part: “metal stearate as additive material” in response to the election of species requirement.

Claims 5, 10 to 13 and 38 were cancelled without prejudice in the present amendment. Therefore, any election of species requirement with respect to claims 5, 10 to 13 and 38 is now moot.

It is respectfully submitted that pending claims 1 to 4, 6 to 9, 14 to 37, 39 and 40 are either a) generic or (b) encompass and are readable on the elected species.

Conclusion

This Response is being submitted in response to the Office Action dated July 27, 2009 in the above-identified application. Concurrently with this Response, Applicant submits a petition for a two-month extension of time for filing a response, along with the requisite fee. Therefore the time for filing a response to the July 27, 2009 Office Action is thereby extended to October 27, 2009, and this Response is being timely filed. It is believed that no fee is due at this time. If it is determined that any additional fee is due in connection with this filing, the Commissioner is authorized to charge said fees to Deposit Account No. 50-0552.

An early and favorable action on the merits is earnestly requested.

Respectfully submitted,
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